

HOUSE BILL REPORT

SHB 1339

As Passed House:

March 12, 2003

Title: An act relating to escrow agents and officers.

Brief Description: Regulating escrow agents and officers.

Sponsors: By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Simpson, Benson and Schual-Berke; by request of Department of Financial Institutions).

Brief History:

Committee Activity:

Financial Institutions & Insurance: 1/31/03, 2/4/03 [DPS];

Appropriations: 2/18/03, 2/25/03 [DPS(FII)].

Floor Activity:

Passed House: 3/12/03, 68-27.

Brief Summary of Substitute Bill

- Requires an escrow agent to maintain a fidelity bond in the amount of \$1 million.
- Increases the licensing requirements applicable to escrow agents and officers.
- Raises licensing fees beginning in fiscal year 2004.
- Requires escrow agents to periodically report to the Department of Financial Institutions regarding the status of trust accounts.
- Creates a new category of licensed escrow officer " the "senior escrow officer."

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Schual-Berke, Chair; Simpson, Vice Chair; Benson, Ranking Minority Member; Cooper, Hatfield, Hunter and Santos.

Minority Report: Do not pass. Signed by 4 members: Representatives Newhouse,

Assistant Ranking Minority Member; Cairnes, Carrell and Roach.

Staff: Thamas Osborn (786-7129).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Financial Institutions & Insurance be substituted therefor and the substitute bill do pass. Signed by 25 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Sehlin, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Alexander, Boldt, Buck, Clements, Cody, Conway, Cox, Dunshee, Grant, Hunter, Kagi, Kessler, Linville, McDonald, McIntire, Miloscia, Pflug, Ruderman, Schual-Berke, Sump and Talcott.

Staff: Amy Skei (786-7140).

Background:

Regulation of the escrow industry: The Department of Financial Institutions (DFI) is responsible for the licensing and regulation of escrow agents under the Escrow Agent Registration Act (Act). The Act provides for the comprehensive regulation of the escrow industry, and includes provisions regarding:

- the licensing of agents and officers;
- bonding requirements;
- prohibited practices and consumer protection; and
- the regulatory authority of the DFI.

Licensing requirements: Only a licensed escrow agent may engage in the business of providing escrow services. A "licensed escrow agent" is defined as any commercial entity that is licensed to provide escrow services with respect to transactions involving real or personal property. Employees who handle escrow transactions on behalf of an agent must themselves be licensed as "escrow officers." Such officers must, in turn, be supervised by a "designated escrow officer" who is also responsible for overseeing the agent's escrow transactions. The "designated escrow officer" is subject to special licensing requirements and must be approved by the Director of the DFI (Director).

To become licensed, an escrow agent must submit an application that includes:

- fingerprints of owners, officers, and other specified persons;
- the criminal records of owners, officers, and others;
- qualifications and business history;
- credit reports on owners, officers, and other specified persons;
- evidence of compliance with bonding and insurance requirements; and
- the identity of the designated escrow officer who will be managing the agency.

Prior to being licensed, a prospective escrow officer must pass an examination requiring,

in part, that he or she demonstrate an appropriate knowledge of the English language, reading, writing, and arithmetic.

Branch offices: To open a branch office, an agent must obtain the approval of the Director after submitting an application. A branch office must be managed by a designated escrow officer.

Fees: The DFI is authorized to charge annual licensing fees for agents as well as officers. The annual fee for an escrow agent license is \$366.29. The annual fee for an escrow officer license is \$169.87.

Bonding requirement: Prior to being licensed as an agent, an applicant must provide satisfactory evidence to the Director that he or she can comply with financial responsibility requirements specified by statute. The statute includes the requirement that the applicant possess a fidelity bond in the amount of \$200,000.

Referral fees: Escrow agents and officers are prohibited from paying any fee to a real estate agent or lender in return for the referral of persons seeking real estate escrow services.

Real Estate Settlement Procedures Act (RESPA): The RESPA (12 U.S.C. section 2601 et seq.) is a federal act designed to protect consumers from exorbitant settlement charges and to prevent other abusive practices that lead to increased costs in the settlement of federally-related mortgage loans. Among the provisions of the act are the following requirements and prohibitions:

- Lenders must provide certain disclosures to borrowers, both at the time of the initial application and at closing, regarding the total amount of closing costs as well as the specific allocation of such costs;
- Prohibits the payment of kickbacks or unearned fees related to the referral of settlement services; and
- Requires notice to borrowers regarding affiliated businesses and transfers of mortgage servicing.

Summary of Substitute Bill:

Senior escrow officer: The bill creates a new category of escrow officer, a "senior escrow officer," who must be specially licensed by the Director. Senior escrow officers are subject to more rigorous licensing requirements than are other escrow officers. The licensing process involves the submission of an application as well as a professional examination, and requires that the applicant satisfy specified criteria related to competence, integrity, experience, and professional fitness. All "designated escrow officers" are required to become specially licensed as senior escrow officers. Furthermore, branch operations must be supervised by a designated senior officer.

On the effective date of the bill, the Director must issue a senior escrow officer's license to designated escrow officers who are in good standing with the DFI and meet specified requirements related to competence and integrity.

Licensed escrow officers may, as of the effective date of the bill, apply for a senior escrow license without taking the requisite examination, provided the officer has at least 10 years experience, is in good standing with the DFI, and meets specified requirements related to competence and integrity.

Licensing of Escrow officers: The requirements for the licensing of escrow officers are expanded and made more stringent.

Escrow agent license: The licensing requirements for escrow agents are expanded to include the satisfaction of criteria related to criminal behavior, business practice history, and integrity.

Branch offices: The criteria for opening a branch office are expanded to include the requirement that the branch be managed by a senior escrow officer who has been designated as the branch escrow officer.

License fees: Beginning in fiscal year 2004, the license fee for escrow agents is increased to \$565 and the fee for escrow officers is increased to \$235.

Examination requirements: An applicant for a senior escrow officer license is required to pass an examination that includes topics related to real estate conveyancing, real property, financing, and management.

Continuing education: All escrow officers and senior escrow officers are required to satisfy annual continuing education requirements.

Fidelity bond: An applicant for a license as an escrow agent must possess a fidelity bond in the amount of \$1 million.

Reports to Director: Each licensed escrow agent is required to periodically report to the Director regarding the status of its trust account.

Prohibition on referral fees: An escrow agent who is in compliance with the RESPA, and the regulations issued pursuant to the bill, is in compliance with state law regarding referral fees paid by escrow agents to lenders and real estate agents.

Repealed statute: RCW 18.44.131 is repealed.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (Financial Institutions & Insurance) The bill creates a new license category for managers and supervisors that has more stringent application requirements. However, the substitute bill eases the application requirements for currently licensed escrow officers so that they are, in effect, "grandfathered" into the new licensing scheme. The increase in the bond requirement is necessary in order to protect consumers in the event an escrow company goes out of business. Recently, many escrow businesses have gone bankrupt and consumers have lost considerable amounts of money. The costs associated with meeting the new bonding requirement are not unduly burdensome on the industry. Furthermore, most escrow agencies already have bonds that satisfy the new requirement. The enhanced regulation of licensees is necessary to protect consumers, and increased licensing fees are justified in order to fund such regulation.

Testimony For: (Appropriations) The goal of this bill is to increase the deterrent for escrow embezzlement and theft. The fee increase to escrow agents and officers, while substantial, is agreeable to the Escrow Commission and the Escrow Association of Washington. This bill would modernize the escrow industry and result in a more skilled escrow officer workforce. Real estate customers and clients will benefit. The higher bonding requirements will help protect consumers from damages due to escrow company fraud.

Testimony Against: (Financial Institutions & Insurance) None.

Testimony Against: (Appropriations) None.

Testified: (Financial Institutions & Insurance) Mark Thomson, Department of Financial Services; Dennis Daus, Escrow Association of Washington; and Bob Mitchell, Washington Association of Realtors.

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